# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**CWP No.233/2001**

**Reserved on: 21.9.2007**

**Decided on.24.10.2007**

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**M/s S.C. Johnson Products Private Limited. …Petitioner.**

**Versus**

**HPSIDC and another. Respondents**

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*Coram*

**The Hon'ble Mr. Justice Rajiv Sharma, J.**

*Whether approved for reporting ?*[1]*. No.*

**For the petitioner : Mr. R.L. Sood, Sr. Advocate with Mr. Vikas Rajput, Advocate.**

**For the respondents Mr. Balwant Kukreja, Advocate for respondent No.1.**

**Mr. Bimal Gupta, Advocate for respondent No.2.**

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**Rajiv Sharma, J.**

**CMP No. 53 of 2007**

For the reasons stated the application is allowed. The name of the petitioner-company be read as M/s S.C. Johnson Products Private Limited having its registered office at M-69, M-Block, Greater Kailash-II, New Delhi. The Registry is directed to amend the cause title accordingly.

**CWP No. 233/2001**

The brief facts which can be culled out from the pleadings of the parties are that the allotment of industrial plot bearing plot No.70 was made in favour of M/s. Shivalik Video Communication Private Limited vide communication dated 6.4.1989. Consequently the agreement was entered into between M/s. Shivalik Video Communication Private Limited and respondent No.1-corporation on 7th April, 1989 and possession of the plot was handed over to M/s. Shivalik Video Communication Private

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

Limited. The sale/conveyance deed was executed in favour of M/s. Shivalik Video Communication Private Limited on 4.9.1989. The sale deed contained various terms and conditions governing the allotment and use of plot, clause 2 (xi) (a) & (b) reads thus:

> **"2 (xi) (a) The vendee shall not sell, lease out, transfer, assign or otherwise part with the possession of the plot or building erected thereon either in whole or part except with the prior written approval of the Managing Director of the vendor/Corporation. The Managing Director of the Corporation shall have the right to refuse such requests in his absolute discretion.**
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> **In the event of such consent being given the corporation may impose such terms and conditions as it deemed fit and the corporation shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the final price paid and market value) of the Industrial Plot at the time of sale, transfer, assignment, or parting with the possession. The amount to be recovered will be 50% of the unearned increase and the decision of the Managing Director of the Corporation in respect of determination of market value shall be final and binding;**
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> **2 (xi) (b) The vendee may, with the prior written consent from the Corporation, mortgage his rights in the Industrial Plot to such financial institutions as may be approved by the Corporation in its absolute discretion. In the event of sale or fore-closure of the mortgaged property, the Corporation shall be entitled to claim and recover the 50% of the unearned increase in the value of the industrial plot as aforesaid, and the amount of the Corporation's share of the said unearned increase shall be the first charge having priority over the said mortgage or charge."**

M/s. Shivalik Video Communication Private Limited sought permission to grant permission to it to mortgage the plot with respondent No.2 and the respondent No.1 granted the permission vide letter dated 27.10.1989 enabling M/s Shivalik Video Communication Private Limited to

avail financial assistance from respondents No.1 and 2 jointly by mortgaging plot No. 70. Respondent No.2-corporation sanctioned a term loan of Rs. 57.38 lakhs in favour of M/s Shivalik Video Communication Private Limited on 2.5.1988 for the establishment of Industrial unit for the manufacture of line output transformers and TV sets at plot No. 70, HPSIDC Industrial area Baddi, Distt Solan HP. The Company had availed the loan of Rs. 54,80,860/-. The loan agreement was entered into between M/s Shivalik Video Communication Private Limited and respondent No. 2 on 7.10.1989. The respondent No.2 – Corporation initiated action under section 29 of the State Financial Corporation Act, 1951 against M/s Shivalik Video Communication Private Limited for the realization of its outstanding loan and took over the possession of the mortgaged/hypothecated assets of M/s Shivalik Video Communications Private Limited on 29.11.1994. The assets of M/s Shivalik Video Communication Private Limited were put to sale and the petitioner-company being interested party entered into correspondence with the respondent No. 2. The respondent No. 2 vide communication dated 17th September 1996 addressed to the petitioner-company informed that the total area of the plot is 6994 Sq. mtrs. and the total constructed area is 12757.75 sfts. and that the sale shall take place strictly on “as is where is” basis . The petitioner-company was advised to contact Branch Manager of Parwanoo to inspect the assets. Consequently a draft amounting to Rs. 7,80,000/- was sent to the Managing Director of the respondent No. 2-corporation with the communication dated 21st March 1997 towards the earnest money. Petitioner-company informed the Managing Director of respondent No. 2 Corporation on 20th March 1997 that it was interested in purchasing a unit free from all encumbrances whatsoever and made the following offer:-

**"(i) Rs. 78.00 lacs as sale consideration.**

**(ii) Rs. 7.34 lacs as unearned increase money to HPSIDC-if applicable.**

**(iii) Rs. 1.50 lacs as maintenance charges due to HPSIDC-if applicable."**

Consequently, the Deputy General Manager of the respondent-No.2-corporation informed the petitioner-company that the offer made by the petitioner-company was acceptable and the petitioner-company was directed to deposit the balance sale proceed of Rs. 70.20 lakh in addition to Rs. 7,80,000/- already deposited by draft. The petitioner deposited the amount initially by sending a draft of Rs. 45.00 lakhs which was followed by a draft of Rs. 30 lakhs. The General Manager (RFA) of respondent No.2-corporation sent a communication to the Manager of respondent No.-1 corporation on 10th July, 1997 informing him that the purchaser, i.e. the petitioner-company had deposited the entire sale proceed of Rs. 78.00 lakhs with the corporation and the possession of the assets be handed over to the purchaser. The petitioner-company took over the possession of the unit on "as is where is" bases on 22.7.1997. The respondent No.1-corporation sent a communication to the petitioner on 22nd September, 1999 seeking certain details with regard to un-earned increase etc. This was followed by another letter from respondent No.1-corporation dated 19.11.1999. The petitioner-company informed the Managing Director of the respondent No.2-corporation that it has already paid the entire dues as advised by the respondent No.1-corporation and the assets were already taken over by it on 22nd July, 1997 in the presence of M.R. Kanwar, SDO of the respondent No.1-corporation. The petitioner-company sent a communication to the Managing Director of respondent No.2-corporation requesting it to execute the sale deed of plot No.70 vide communication dated 18th September, 2000. It was followed by a reminder dated 30th

September, 2000. Respondent No.1-corporation sent a legal notice to the petitioner-company on 24th December, 1999 whereby the unearned increase/annual maintenance charges etc. were demanded from the petitioner-company amounting to Rs. 27,73,728/- on the basis of clause 2 (xi) (b) of the sale/conveyance deed executed in favour of M/s. Shivalik Video Communication Private Limited and the respondent No.1-corporation. This was followed by another communication dated 27.12.2000. The petitioner-company was again called upon to deposit a sum of Rs. 27,73,728/- vide letter dated 19.2.2001. The communication dated 27.12.2000 and 19.2.2001 were replied by the counsel of the petitioner-company on 15.3.2001.

Mr. R.L. Sood, Sr. Advocate appearing on behalf of the petitioner-company had strenuously argued that the respondent No.2-corporation has taken over the assets of M/s. Shivalik Video Communication Private Limited as per section 29 of the State Financial Corporation Act, 1951 and thereafter it has become absolute owner and the petitioner-company had purchased only the land and plot known as plot No.70 and the plant machinery has been taken over by its sister concern M/s. Karam Chand Electrical, but they have never taken over the liabilities of M/s. Shivalik Video Communication Private Limited. Mr. Sood further contended that the petitioner-company is not bound in any manner by the terms and conditions entered into between M/s. Shivalik Video Communication Private Limited and respondent No.1-corporation and thus the action of respondent No.1 to demand the unearned increase or maintenance charges is *per se* illegal. He had further contended that respondent No.1-coroporation had filed suit against M/s. Shivalik Video Communication Private Limited for recovery of its balance dues after adjusting its arrear or sale consideration received from respondent No.2-corporation which was

released after the sale of the taken over assets of the unit under section 29 of the State Financial Corporation Act, 1951. He had also argued that the land in question was never sold by defaulting company i.e. M/s Shivalik Video Communication Private Limited but the same has been sold by respondent No.2-corporation. Mr. Sood on the basis of aforesaid submissions prayed that respondent No.1 be directed to execute the sale deed in favour of the petitioner-company and they be restrained from resumption of plot.

Mr. Balwant Kukreja, learned Advocate appearing on behalf of respondent No.1-corporation while referring to the correspondence entered into between the parties had vehemently argued that the petitioner-company is bound to pay the amount towards the unearned increase as well as maintenance charges demanded from time to time.

Mr. Bimal Gupta, Advocate had adopted the arguments advanced by Mr. Kukreja and has reiterated that the petitioner-company is bound to pay an unearned increase and maintenance charges after the petitioner-company has purchased the assets from it.

I have heard the learned counsel for the parties and perused the record.

The position which emerges from the aforesaid facts is that the plot No.70 measuring 699.4 sq. mtrs. was original allotted in favour of M/s Shivalik Video Communication Private Limited on 7.4.1989. The agreement was also entered between M/s. Shivalik Video Communication Private Limited and respondent No.1-corporation on 7.4.1989 and possession was handed over on 16.5.1989. The sale/conveyance deed was also executed in favour of M/s Shivalik Video Communication Private Limited on 4.9.1989. The clause (2) (xi) (a) and (b) has already been reproduced in paras (supra). It is evident from the language employed in

clause (2) (xi) (a) and (b) that these conditions only bind M/s Shivalik Video Communication Private Limited and the respondent No.1-corporation. In the present case the land has not been sold by M/s Shivalik Video Communication Private Limited, but it has been sold by respondent No.2-corporation after taking over the possession of assets of M/s Shivalik Video Communication Private Limited as per section 29 of the State Financial Corporation Act, 1951 on 29.11.1994. The petitioner-company was informed by the respondent No.2-corporation on 17.9.1996 that the sale will take place strictly on “as is where is” basis. The petitioner-company had informed the Managing Director of respondent No.2-corporation on 20.3.1997 that it is ready and willing to purchase the assets on the total consideration of Rs. 78 lakhs and Rs. 7.34 lakhs as unearned increase money, if applicable and similarly Rs. 1.50 lakhs as maintenance charges due to respondent No.1-corporation, if applicable. The Sub Committee of respondent No.2-corporation had approved the offer made by the petitioner in its meeting held on 20th March, 1997 by holding that the sale offered by the petitioner-company pursuant to advertisement made in the month of January, 1997 was the highest. It had also come in the decision of the Sub Committee that in addition the purchaser shall have to pay a 50% of unearned increase income (Rs. 7.34 lakhs approximately) and maintenance charges of Rs. 1.50 lakhs approximately to respondent No.1-corporation. The petitioner had sent a communication to the General Manager of respondent No.2 corporation that the unearned increase income of the plot and towards arrears of maintenance charges etc. towards the land shall be borne by it only if applicable in principle. The petitioner-company was informed that the unit was being sold on “as is where is” basis and free from all encumbrances except the liabilities, unearned income of plot and arrears of maintenance

charges etc. The Managing Director of respondent No.1-corporation had drawn the memorandum for the Board of Directors on 27.3.1997 which was approved by the Board of Directors in its meeting held on 29.3.1997. It was reiterated in the resolution that the Corporation was authorized to charge an unearned increase of 50% which was Rs. 7.35 lakhs and in addition to the entire annual maintenance charges of Rs. 5.2 lakhs from the party. The petitioner-company had initially deposited earnest money of Rs. 7.80 lakhs along with communication dated 21st March, 1997 and thereafter was called upon to deposit the remaining amount of Rs. 70.20 lakhs by the respondent No.2-corporation on 25.3.1997. A sum of Rs. 70.20 lakh was deposited by the petitioner-company with the respondent No.2-corporation and consequently on 10th July, 1997, the General Manager had informed the Manager of respondent No.2-corporation to hand over the possession to the petitioner-company in the presence of the representatives of respondent No.-1 corporation. The possession was taken by the petitioner-company on 22nd July, 1997. Though every thing was settled including the payment of money as well as possession was taken over by the company, a communication emanated from the office of respondent No.1-corporation which was addressed to the petitioner-company on 22nd September, 1999 whereby an information was sought whether the company had deposited the unearned increase and other maintenance charges with the HPFC or not. An impression is being given by this communication as if no correspondence was entered into between the petitioner and the respondent No.1. The respondent No.1 was throughout aware of the unit being purchased by petitioner from respondent No.2-corporation, which was also endorsed by Board of Directors in its meeting held on 29th March, 1997. The legal notice was issued to the petitioner company on 24.12.1999 by the respondent No.1-

corporation which was duly replied to by the petitioner-company on 15th March, 2001.

It is in this background that the submission made by the learned counsel for the parties are to be considered. The respondent No.2-corporation will be deemed to be the owner of the assets of M/s Shivalik Video Communication Private Limited when it took over the possessions of its assets under section 29 of the State Financial Corporation, 1951 on 29th November, 1994. Thereafter an advertisement was issued in the newspapers inviting offers for the sale of the assets acquired by the respondent No.2-corporation. The petitioner-company was the highest bidder and consequently the correspondence was entered into between various parties. The petitioner-company was informed that the sale will take place on “as is where is” basis. The respondent No.2-corporation had accepted the entire amount of Rs. 78.00 lakhs as offered by the petitioner-company. The possession was handed over to it on 22nd July, 1997. Respondent No.1-corportion was throughout aware that the petitioner-company was the highest bidder and the sale was approved by the Sub Committee of respondent No.2-corporation on 20th March, 1997. In fact, the Board of Directors has also approved the sale in its meeting held on 29th March, 1997 pursuant to memorandum drawn by its Managing Director on 27th March, 1997. The basis for claiming the unearned increase and maintenance charges is the conveyance deed executed between M/s Shivalik Video Communication Private Limited and respondent No.1-corporation on 4th September, 1989 to which the petitioner-company was not a party. Whatever conditions might have been incorporated in the conveyance deed were binding on the parties to the conveyance deed alone. Consequently the unearned increase could not be demanded from the petitioner-company at all by the respondents.

Immediately after the assets were taken over by the respondent No.-2-corporation it became the deemed owner of the assets of M/s Shivalik Video Communication Private Limited. The petitioner-company had purchased the assets from respondent No.2, which was duly approved by respondent No.1 as well.

A Division Bench of the ***Kerala High Court has held in F.S. Chhajerh versus Kerala Financial Corporation and another***, Vol. 82-1995, 1 that the Financial Corporation which has invoked section 29 of the State Financial Corporation Act can be deemed to be the owner of the concern and the transferee gets full rights in the property transferred. Their Lordships have held as under:

> **"Section 29 enables the financial corporation to proceed against the defaulting creditor to realize the dues to it. The section also enables the financial corporation to take over the management or possession or both of the industrial concern when default in repayment of the loan advanced has occurred or when the concern fails to comply with the terms of the agreement with the financial corporation. In such a situation, this section gives ample power to the financial corporation not only to take over the management or possession or both of the industrial concern but also the right to transfer by way of lease or sale to realize the amount due from the industrial concern. The transferee under section 29 (1) gets all rights in the property as if the transfer had been made by the owner of the property. Sub-section (2) makes the position clear. Sub-section (5) states that in a case where the financial corporation has invoked the power under sub-section (1) it becomes the owner of the concern and it can sue or be sued in the name of the concern. Thus, from a reading of section 29 the indubitable position is that the financial corporation which has invoked this section can be deemed to be the owner of the concern and the transferee gets full rights in the property transferred."**

The submission made by Mr. Balwant Kukreja and Mr. Bimal Gupta, Advocates that the petitioner –company had agreed to pay the unearned increase and maintenance charges is also untenable since in every communication, the petitioner-company had stated that it will pay these amounts, if applicable. The petitioner-company had deposited the entire amount with respondent No.2-corporation and consequently, the sale deed was required to be executed with the petitioner-company. The execution of the sale deed could not be delayed once the amount has been accepted by the respondent No.2-corporation. The impression given by respondent No.1-corporation that it was not aware about what transpired between respondent No.1 and 2 cannot be accepted in view of the long correspondence which has been exchanged between the parties. Respondents No.1 and 2 are the State within the meaning of Article 12 of the Constitution of India and could not demand something which is not permissible under the law. Every action of the state or its instrumentalities must conform to Article 14 of the Constitution of India. The demand of unearned increase from the petitioner-company, who admittedly was not a party to the conveyance deed is arbitrary besides the same being unreasonable. In fact, respondent No.1 had agreed for transfer and sale of the assets of M/s Shivalik Video Communication Private Limited in favour of the petitioner-company as is evident from the contents of the resolution passed by the Board of Directors on 29th March, 1997. The petitioner-company had purchased the assets of M/s Shivalik Video Communication Private Limited and not its liabilities. The decision of respondent No.1 to fasten the liabilities of M/s Shivalik Video Communication Private Limited on the petitioner-company is without legal auhtority.

Consequently, the writ petition is allowed and Annexures P-18 and P-19 dated 27.12.2001 and 19.2.2001 are quashed and set aside. The respondents are directed to execute and register the conveyance deed in favour of the petitioner-company in respect of plot No.70, HPSIDC, Industrial Area, Baddi, District solan, H.P., within four weeks from today. There shall be no order as to costs.

**( Rajiv Sharma), Judge**

October 24, 2007
**Awasthi**